

AGENDA
LODI PUBLIC IMPROVEMENT CORPORATION
WEDNESDAY, JULY 20, 1988
7:30 P.M.
CITY COUNCIL CHAMBERS
221 WEST PINE STREET, LODI

- i. Roll Call - to be recorded **by** secretary
2. Resolution approving, authorizing and directing execution of certain installment sale financing documents and authorizing and directing certain actions with respect thereto (1988 Wastewater Treatment Plant Expansion Project) (Res. No. 88-7)
3. Other business
4. Adjournment - Chairman Pinkerton

INSTALLMENT SALE AGREEMENT

Dated as of August 1, 1988

by and between the

LODI PUBLIC IMPROVEMENT CORPORATION, as Seller

and the

CITY OF LODI, CALIFORNIA, as Purchaser

(1988 Wastewater Treatment Plant Expansion Project)

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INSTALLMENT SALE AGREEMENT

THIS INSTALLMENT SALE AGREEMENT, dated as of August 1, 1988. by and between the LODI PUBLIC IMPROVEMENT CORPORATION, a nonprofit, public benefit corporation organized and existing under the laws of the State of California, as seller (the "Corporation"), and the CITY OF LODI, CALIFORNIA, a general law city organized and existing under the Constitution and laws of the State of California, as purchaser (the "City");

WITNESSETH:

WHEREAS, the City wishes to construct certain improvements to its municipal wastewater treatment plant, and the City is authorized pursuant to the Constitution and laws of the State of California to construct such improvements;

WHEREAS, the City Council or the City has determined that in order to secure financing for such purpose it is necessary and desirable to purchase such improvements (the "Project") from the Corporation pursuant to this Installment Sale Agreement; and

WHEREAS, the Corporation will cause funds to be provided for the construction of the Project **and** the City will agree to make installment payments pursuant to **this** installment Sale Agreement in order to purchase the Project from the Corporation;

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants hereinafter contained **and** for other good and valuable consideration, the receipt and sufficiency of which **is** hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND EXHIBITS

Section 1.01. Definitions. Unless the context otherwise requires, the terms defined in Exhibit A attached hereto shall, for all purposes of this Installment Sale Agreement, have the meanings specified therein.

Section 1.02. Content of Written Certificates. Every certificate provided for in this Installment Sale Agreement with respect to compliance with any provision hereof shall include (a) a statement that the person making or giving such certificate or opinion has read such provision and the definitions herein relating thereto; (b) a brief statement as to *the* nature and scope of the examination or investigation upon which the certificate is based; (c) a statement that, in the opinion of such person, he has made or caused to be made such examination or investigation as is necessary to enable him to express an informed opinion with respect to the subject matter referred to in the instrument to which his signature is affixed; (d) a statement of the assumptions upon which such certificate is based, and that such assumptions are reasonable; and (e) a statement as to whether, in the opinion of such person, such provision has been complied with.

Any such certificate made or given by a City Representative may be based, insofar as it relates to legal or accounting matters, upon a certificate or opinion of or representation by counsel or an accountant, unless such City Representative knows, or in the exercise of reasonable care should have known, that the certificate, opinion or representation with respect to the matters upon which such certificate or statement may be based, as aforesaid, is erroneous. Any such certificate or opinion made or given by counsel or an accountant may be based, insofar as it relates to factual matters (with respect to which information is in the possession of the City) upon a certificate or opinion of or representation by a City Representative, unless such counsel or accountant knows, or in the exercise of reasonable care should have known, that the certificate or opinion or representation with respect to the matters upon which such person's certificate or opinion or representation may be based, as aforesaid, is erroneous. The same City Representative, or the same counsel or accountant, as the case may be, need not certify to all of the matters required to be certified under any provision of this installment Sale Agreement, but different officers, counsel or accountants may certify to different matters, respectively.

Section 1.03. Exhibits. The following Exhibits are attached to, and by **this** reference are made a part **of**, this Installment Sale Agreement:

Exhibit A: Definitions

Exhibit 5: Project Description

Exhibit C: The schedule of Installment Payments to be paid by the City to the Corporation, showing the Due Date and amount of **each** Installment Payment.

ARTICLE II

REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.01. Representations, Covenants and Warranties of the City. The City represents, covenants and warrants to the Corporation as follows:

(a) The City is a general law city, duly organized and existing under the Constitution and laws of the State of California.

(b) The Constitution and the laws of the State of California authorize the City to enter into this Installment Sale Agreement and the Trust Agreement and to enter into the transactions contemplated by and to carry out its obligations under each of the aforesaid agreements, and the City has duly authorized and executed each of the aforesaid agreements.

(c) Neither the execution and delivery of this Installment Sale Agreement or the Trust Agreement, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the City is now a party or by which the City is bound or constitutes a default under any of the foregoing.

(6) The City has duly authorized and executed this Installment Sale Agreement in accordance with the laws of the State of California.

(e) The City is empowered to set rates and charges for sewer service provided to the users of the Enterprise without review or approval by any state or local governmental agency.

Section 2.02. Representations, Covenants and Warranties of the Corporation. The Corporation represents, covenants and warrants to the City as follows:

(a) The Corporation is a nonprofit, public benefit corporation duly organized, existing and in good standing under and by virtue of the laws of the State of California; has power to enter into this Installment Sale Agreement, the Assignment Agreement and the Trust Agreement; is possessed of full power to own and hold real and personal property, and to sell the same; and has duly authorized the execution and delivery of all of the aforesaid agreements.

(b) The Corporation has not pledged and will not pledge the Instalment Payments or other amounts derived from the Project and from its other rights under this Installment Sale Agreement, and will not mortgage or encumber the Project, except as provided under the terms of this Installment Sale Agreement, the Assignment Agreement and the Trust Agreement.

(c) Neither the execution and delivery of this Installment Sale Agreement, the Assignment Agreement or the Trust Agreement, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions

contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement, Instrument, regulation or law to which the Corporation is now a party or by which the Corporation is bound, or constitutes a default under any of the foregoing.

(d) Except as provided herein, the Corporation will not assign this Installment Sale Agreement, its right to receive Installment Payments from the City or its duties and obligations hereunder to any other person, firm or corporation so as to impair or violate the representations, covenants and warranties contained in this Section 2.02.

ARTICLE III

DEPOSIT OF MONEYS; CONSTRUCTION OF PROJECT

Section 3.01. Deposit of Moneys. On the Closing Date, the Corporation shall cause to be deposited with the Trustee \$_____. Pursuant to the Trust Agreement, the Trustee shall deposit the following amounts in the following respective funds: (a) an amount equal to \$_____, representing accrued interest with respect to the Certificates from August 1, 1988, to the Closing Date, shall be deposited in the Installment Payment Fund and credited towards the Installment Payments as they become due; (b) an amount equal to \$_____ (representing the Reserve Requirement as of the Closing Date), shall be deposited in the Reserve Fund; (c) an amount equal to \$_____ shall be deposited in the Delivery Costs Fund; and (d) the remaining balance, \$_____, shall be deposited in the Construction Fund.

Section 3.02. Construction of Project. The Corporation hereby appoints the City its agent to acquire and construct the Project to be financed with the proceeds of the Certificates.

Section 3.03. Payment of Construction Costs and Delivery Costs. Payment of the Construction Costs shall be made from the moneys deposited with the Trustee in the Construction Fund, which moneys shall be disbursed for such purpose in accordance and upon compliance with Section 3.02 of the Trust Agreement. Payment of Delivery Costs shall be made from the moneys deposited with the Trustee in the Delivery Costs Fund, which moneys shall be disbursed for such purpose in accordance and upon compliance with Section 3.04 of the Trust Agreement. The City has estimated the cost of the Project to be approximately \$10,950,000. of which the City hereby covenants to pay, to the extend necessary to complete the Project, from any legally available source of money, \$2,000,000. The City hereby covenants to pay necessary Construction Costs and Delivery Costs in excess of amounts available from Certificate proceeds from any legally available source of Funds.

Section 3.04. Unexpended Proceeds. In accordance with Section 3.03 of the Trust Agreement, all excess moneys remaining in the Construction Fund and not required for payment of Construction Costs shall be transferred to the installment Payment Fund for application to payment of the Installment Payments as the same become due and payable.

ARTICLE IV

SALE OF PROJECT; TITLE TO THE PROJECT; TERM OF THE INSTALLMENT SALE AGREEMENT; INSTALLMENT PAYMENTS

Section 4.01. Sale. The Corporation hereby seils, bargains and conveys the Project to the City, arid the City hereby purchases the Project from the Corporation upon the terms and conditions set forth in this Installment Sale Agreement.

Section 4.02. Title. The City and the Corporation agree that title to the Project shall be deemed conveyed to and vested in the City on the Closing Date, subject only to Permitted Encumbrances. The Corporation and its officers shall take all actions necessary to vest in the City all of the Corporation's rights in and title to the Project.

Section 4.03. Term of the Installment Sale Agreement. The Term of the Installment Sale Agreement shall commence as of the date hereof and shall end on August 1, 2018, unless such term is extended or sooner terminated as hereinafter provided. If on August 1, 2018, the Trust Agreement shall not be discharged by its terms, then the Term of the Installment Sale Agreement shall be extended until ten (10) days after the Trust Agreement shall be discharged by its terms. If prior to August 1, 2018, the Trust Agreement shall be discharged by its terms, the Term of the Installment Sale Agreement shall end ten (10) days after the date of such discharge. In any event, the Term of this Installment Sale Agreement shall terminate on August 1, 2028.

Section 4.04. Installment Payments.

(a) Obligation to Pay. The City agrees to pay to the Corporation, its successors and assigns, as the purchase price of the Project, the Instalment Payments, consisting of components of principal and interest, on the Gue Dates and in the amounts specified in Section 4.06(b) hereof. The Installment Payments shall be payable solely from a first **and** prior lien on the Net Revenues as hereinafter provided.

(b) Reduction Upon Partial Prepayment. **In** the event the City prepays less than all of the remaining principal components of the Installment Payments pursuant to Section 10.03 hereof, the amount of such prepayment shall be applied to reduce the principal component of the subsequent remaining Installment Payments and, therefore, the Outstanding principal amount of Certificates, in inverse order of payment date and the interest component of each subsequent remaining Installment Payment shall be reduced by the aggregate corresponding amount of interest which would otherwise be payable with respect to the Certificates redeemed as a result of such prepayment.

(c) Rate on Overdue Payments. In the event the City should fail to make any of the payments required in this Section 4.04 so that there are insufficient funds on hand in the Installment Payment Fund to pay any Installment Payment in full on an interest Payment Date. the Instalment Payment in default shall continue as an obligation of the City until the amount in default shall have been fully paid and the City agrees to pay the same with interest thereon, to the extent permitted by law, from the date thereof at the rate of interest payable with respect to the Certificates.

(d) Assignment. The City understands and agrees that the Corporation has assigned its right, title and interest in this Installment Sale Agreement to the Trustee pursuant to the Assignment Agreement for the benefit of the Owners and the City assents to such assignment. The Corporation hereby directs the City, and the City hereby agrees, to pay to the Trustee at the Trustee's principal corporate trust office in San Francisco, California, or to the Trustee at such other place as the Trustee shall direct in writing, all payments payable by the City pursuant to this Section 4.04 and all amounts payable by the City pursuant to Article X hereof.

Section 4.05. Special Obligation of the City. The City's Obligation to pay the Installment Payments shall be a special obligation limited solely to Net Revenues. Under no circumstances shall the City be required to advance any moneys derived from any source of income other than the Net Revenues and other sources specifically identified herein for the payment of the Installment Payments, nor shall any other funds or property of the City be liable for the payment of the Installment Payments. The obligation of the City to make Installment Payments does not constitute an indebtedness within the meaning of any constitutional or statutory debt limit or restriction.

The obligations of the City to make the installment Payments from Net Revenues and to perform and observe the other agreements contained herein shall be absolute and unconditional and shall not be subject to any defense or any right of setoff, counterclaim or recoupment arising out of any breach of the City, the Corporation or the Trustee of any obligation to the City or otherwise with respect to the Project, whether hereunder or otherwise, or out of indebtedness or liability at any time owing to the City by the Corporation or the Trustee. Until such time as all of the Installment Payments shall have been fully paid or prepaid, the City (a) will not suspend, abate, or discontinue any payments provided for in Section 4.04 hereof, (b) will perform and observe all other agreements contained in this Installment Sale Agreement, and (c) will not terminate the Term of the Installment Sale Agreement for any cause, including, without limiting the generality of the foregoing, the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Project, the taking by eminent domain of title to or temporary use of any or all of the Project, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State of California or any political subdivision of either thereof or any failure of the Corporation or the Trustee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Trust Agreement, the Assignment Agreement or this Installment Sale Agreement.

Nothing contained in this Section 4.05 shall be construed to release the Corporation from the performance of any of the agreements on its part herein contained, and in the event the Corporation shall fail to perform any such agreements on its part, the City may institute such action against the Corporation as the City may deem necessary to compel performance so long as such action does not abrogate the obligations of the City contained in the first sentence of the preceding paragraph. The City may, however, at the City's own cost and expense and in the City's own name or in the name of the Corporation prosecute or defend any action or proceeding or take any other action involving third persons which the City deems reasonably necessary in order to secure or protect the City's right of possession, occupancy and use hereunder, and in such event the Corporation hereby agrees to cooperate fully with the City and to take

such action necessary to effect the substitution of the City for the Corporation in such action or proceeding if the City shall so request.

Section 4.06. Pledge of Net Revenues; Deposits to Pay Installment Payments.

(a) Pledge of Net Revenues. The City hereby agrees that the payment of the Installment Payments shall be secured by a first and prior pledge, charge and lien upon Net Revenues, and Net Revenues sufficient to pay the Installment Payments as they become due and payable are hereby pledged, charged, assigned, transferred and set over by the City to the Corporation and its assigns for the purpose of securing payment of the Installment Payments. The Net Revenues shall constitute a trust fund for the security and payment of the Installment Payments. The City further agrees that none of the Net Revenues shall be transferred or paid into its general fund unless and until the then required payments of the Installment Payments have been made and the Reserve Requirement deposit in the Reserve Fund has been met.

(b) Transfer to Pay installment Payments. In order to provide for the payment of Installment Payments when due, the City shall, on or before each Due Date, transfer to the Trustee for deposit into the Installment Payment Fund the amount indicated in Exhibit C attached hereto as required for the next occurring interest Payment Date; provided, however, that, to the extent interest or income earned on the Installment Payment Fund or moneys representing capitalized interest and funded from Certificate proceeds are remaining in the Installment Payment Fund, the City's payment obligations for interest on such Due Date shall be paid therefrom.

Section 4.07. Rate Covenant.

(a) The City hereby covenants that it shall prescribe, revise and collect such charges for the services and facilities of the Enterprise which, after allowances for contingencies and error in the estimates, shall produce Gross Revenues sufficient in each Fiscal Year to provide Net Revenues equal to at least 1.10 times (a) the Installment Payments coming due and payable during such Fiscal Year, and (b) all payments required with respect to Parity Debt, including replenishment of the Reserve Fund, as required by Section 6.06 of the Trust Agreement.

(b) If, in any Fiscal Year, charges for the services and facilities of the Enterprise which, after allowances for contingencies and error in the estimates, shall produce Gross Revenues insufficient in each Fiscal Year to provide Net Revenues equal to at least 1.10 times (a) the Installment Payments coming due and payable during such Fiscal Year, (b) all payments required with respect to Parity Debt, and (c) amounts required for replenishment of the Reserve Fund, the City covenants and agrees to employ an independent consultant to make recommendations as to a revision of the rates, fees and charges of the Enterprise or the methods of operation of the Enterprise that will result in producing Net Revenues in the amount specified in paragraph (a) of this Section 4.07. Copies of the recommendations of such consultant shall be filed with the Trustee.

(c) The City covenants and agrees that it shall, promptly upon its receipt of such recommendations from such consultant, subject to applicable requirements or restrictions imposed by law, and subject to a good faith determination of the governing board of the City that such recommendations, in whole or in part, are in the best

interests of the City, revise its rates, fees and charges or its methods of operation or collections and shall take such other action as shall be in conformity with such recommendations. In the event that the City fails to comply with such recommendations, subject to the applicable requirements or restrictions imposed by law and to the determination of the governing board of the City that such recommendations are in the best interests of the City, the Trustee may, in addition to the rights and remedies elsewhere set forth herein, and shall, upon the written request of the Owners of a majority in principal amount of the Certificstes then Outstanding, and being indemnified to its satisfaction therefor, institute and prosecute an action or proceeding in a court of competent jurisdiction to compel the City to comply with the recommendations and requirements of this paragraph (c). If the City complies in all material respects with the reasonable recommendations of the consultant in respect to said rates, fees, charges and methods of operation or collection, the City will be deemed to have complied with the covenants contained in this Section 4.07 notwithstanding that Net Revenues shall be less than the amount required under this Section 4.07 for such Fiscal Year; provided, however, that such rates, fees, charges and methods of operation or collection shall produce Net Revenues equal to at least 100% of (a) the Installment Payments coming due and payable during such Fiscal Year, (b) all payments required with respect to Parity Debt, and (c) amounts required for replenishment of the Reserve Fund; provided further, that this sentence shall not be construed as in any way excusing the City from taking any action or performing any duty required under this Installment Sale Agreement or be construed as constituting a waiver of any other Event of Default.

Section 4.08. Limitations on Future Obligations Secured by Net Revenues.

(a) No Obligations Superior to Installment Payments. In order to protect further the availability of the Net Revenues and the security for the Installment Payments and any Parity Debt, the City hereby agrees that the City shall not, so long as any Certificates are outstanding, issue or incur any obligations payable from the Net Revenues superior to the Installment Payments or such Parity Debt.

(b) Parity Debt. The City further covenants that, except for obligations issued or incurred to prepay the Installment Payments in full pursuant to Section 10.02 hereof, the City shall not issue or incur any Parity Debt unless each of the following conditions is satisfied:

(i) The City is not in default under the terms of this Installment Sale Agreement;

(ii) Net Revenues, **calculated** on sound accounting principles, as **shown by** the books of the City for the latest Fiscal Year or any more recent twelve (12) month period selected by the City ending not more than sixty (60) days prior to the adoption of the resolution pursuant to which instrument such Parity Debt is issued or incurred, as shown by the books of the City, plus, at the option of the City, either or both of the items hereinafter in this subsection designated **(1)** and **(2)**, shall have amounted to at least 1.10 times the sum of the maximum Installment Payments coming due and payable in any future Fiscal Year and the maximum annual debt service on all Parity Debt outstanding immediately subsequent to the incurring of such additional obligations.

Either or both of the following items may be added to such Net Revenues for the purpose of applying the restriction contained in this subsection (b)(ii):

(1) An allowance for revenues from any additions to or improvements or extensions of the Enterprise to be made with the proceeds of such additional obligations, and also for net revenues from any such additions, improvements or extensions which have been made from moneys from any source but which, during all or any part of such Fiscal Year, were not in service, all in an amount equal to 70% of the estimated additional average annual Net Revenues to be derived from such additions, improvements and extensions for the first 36-month period following closing of the proposed Parity Debt, all as shown by the certificate or opinion of a qualified independent engineer employed by the City.

(2) An allowance for earnings arising from any increase in the charges made for service from the Enterprise which has become effective prior to the incurring of such additional obligations but which, during all or any part of such Fiscal Year, was not in effect, in an amount equal to 100% of the amount by which Net Revenues would have been increased if such increase in charges had been in effect during the whole of such Fiscal Year and any period prior to the incurring of such additional obligations, as shown by the certificate or opinion of a qualified independent engineer employed by the City: and

(iii) A reserve fund shall be funded for such Parity Debt which is at least equal to the amount **resulting** from the application on the closing date of such Parity Debt of the formula contained in the definition of "Reserve Requirement" contained herein.

Section 4.09. Additional Payments. In addition to the Installment Payments, the City shall pay, from Net Revenues, when due all costs and expenses incurred by the Corporation to comply with the provisions of the Trust Agreement and this Installment Sale Agreement, including, without limitation all Delivery Costs (to the extent not paid from amounts on deposit in the Delivery Costs Fund), compensation due to the Trustee for its fees, costs and expenses incurred under the Trust Agreement and the Assignment Agreement and all costs and expenses of attorneys, auditors, engineers and accountants.

Section 4.10. Payments to Reserve Fund. In addition to the Installment Payments, the City shall pay to the Trustee, from Net Revenues, such **amounts** as shall **be** required to replenish the Reserve Fund in the event of a draw therefrom, all in accordance with Section 6.06 of the Trust Agreement.

ARTICLE V

MAINTENANCE; TAXES; INSURANCE; AND OTHER MATTERS

Section 5.01. Maintenance, Utilities, Taxes and Assessments. The City covenants to operate the Enterprise in an efficient and economical manner and operate, maintain and preserve the Enterprise in good repair and working order.

The City shall also pay or cause to be paid all taxes and assessments of any type or nature charged to the Corporation or the City or levied, assessed or charged against the Enterprise or the respective interests or estates therein; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the City shall be obligated to pay only such installments as are required to be paid during the Term of the Installment Sale Agreement as and when the same become due. The City shall not be required to pay any federal, state or local income, inheritance, estate, succession, transfer, gift, franchise, gross receipts, profit, excess profit, capital stock, corporate, or other similar tax payable by the Corporation, its successors or assigns, unless such tax is made in lieu of or as a substitute for any real estate or other tax upon property.

The City may, at the City's expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Corporation shall notify the City that, in the opinion of Independent Counsel, by nonpayment of any such items, the Project or any part thereof will be subject to loss or forfeiture, in which event the City shall promptly pay such taxes, assessments or charges or provide the Corporation with full security against any loss which may result from nonpayment, in form satisfactory to the Corporation.

Section 5.02. Modification of Project. The City shall, at its own expense, have the right to remodel the Project or to make additions, modifications and improvements thereto. All such additions, modifications and improvements shall thereafter comprise part of the Project and be subject to the provisions of this Installment Sale Agreement. Such additions, modifications and improvements shall not in any way damage the Project or cause it to be used for purposes other than those authorized under the provisions of state and federal law; and the Project, upon completion of any additions, modifications and improvements made pursuant to this Section 5.02, shall be of a value which is not substantially less than the value of the Project immediately prior to the making of such additions, modifications and improvements.

Section 5.03. Public Liability and Property Damage Insurance. The City shall maintain or cause to be maintained, throughout the Term of the Installment Sale Agreement, insurance policies, including a standard comprehensive general insurance policy or policies in protection of the City, its members, officers, agents and employees. Said policy or policies shall provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by reason of the construction or operation of the Enterprise (but only if in the opinion of the City such insurance is available at reasonable cost on the

open market from reputable insurance companies). Said policy or policies shall provide coverage in the minimum liability limits of \$1,000,000 for personal injury or death of each person and \$3,000,000 for personal injury or deaths of two or more persons in each accident or event, end in a minimum amount of \$250,000 (subject to a deductible clause of not to exceed 8200,000) for damage to property resulting from each accident or event. Such public liability and property damage insurance may, however, be in the form of a single limit policy in the amount of \$3,000,000 covering all such risks. Such liability insurance may be maintained as part of or in conjunction with any other liability insurance coverage carried by the City, and may be maintained (and shall be obtained if such insurance is not obtained in the openmarket because it is unavailable at commercially reasonable rates, as described above) in the form of self-insurance by the City. If the City shall maintain self-insurance, it shall supply to the Trustee a statement of sufficiency by an independent insurance consultant or the City's risk manager on an annual basis as described in Section 5.05 hereof. The Net Proceeds of such liability insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which the insurance proceeds shall have been paid.

Section 5.04. Fire and Extended Coverage Insurance. The City shall procure and maintain, or cause to be procured, and maintained throughout the Term of the installment Sale Agreement, insurance against loss or damage to any structures constituting any part of the Enterprise (excluding transmission and distribution pipelines and equipment in public and private rights-of-way) by fire and lightning, with extended coverage insurance. Such insurance shall be in an amount equal to either (i) the greater of 100% of the replacement cost of the Project or (ii) the then Outstanding principal amount of Certificates (but only if, in the opinion of the City, such insurance is available at reasonable cost on the open market from reputable insurance companies). Such insurance described in fi) above may be subject to a deductible clause of not to exceed ten percent of said replacement cost for any one loss and such insurance described in (ii) above may be subject to deductible clauses of not to exceed \$100,000 for any one loss. Such insurance may be maintained as part of or in conjunction with any other fire and extended coverage insurance carried or required to be carried by the City, and may be maintained (and shall be obtained if such insurance is not obtained in the open market because it is unavailable at commercially reasonable rates, as described above) in the form of self-insurance by the City. If the City shall maintain self-insurance, it will supply to the Trustee a statement of sufficiency by an independent insurance consultant or the City's risk manager on an annual basis as described in Section 5.05 hereof. The Net Proceeds of such insurance shall be applied as provided in Section 6.01(a) hereof.

Section 5.05. Insurance Net Proceeds: Form of Policies. The policy of insurance required by Section 5.04 hereof shall provide that all proceeds thereunder shall be payable to the Trustee for the benefit of the Certificate Owners. The City shall pay or cause to be paid when due the premiums for all insurance policies required by this Installment Sale Agreement. All such policies shall provide that the Trustee shall be given thirty (30) days' notice of each expiration, any intended cancellation thereof or reduction of the coverage provided thereby. The Trustee shall not be responsible for the sufficiency of any insurance herein required or for the obtaining of such insurance and shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss agreed to by the City. The City shall cause to be delivered to the Trustee on the Closing Date and at least annually thereafter, no later than the end of each Fiscal Year, a Written Certificate signed by a City

Representative stating that the City is in compliance with Sections 5.03 and 5.04 of this Agreement. The Trustee may conclusively rely on such certificate.

Section 5.06. Advances. If the City shall fail to perform any of its obligations under this Article V, the Corporation may, but shall not be obligated to, take such action as may be necessary to cure such failure, including the advancement of money, and the City shall be obligated to repay all such advances as soon as possible, with interest at the rate of interest with respect to the Certificates from the date of the advance to the date of repayment.

Section 5.07. Installation of City's Equipment. The City may at any time and from time to time, in its sole discretion and at its own expense, install or permit to be installed other items of equipment or other personal property in or upon the Project. All such items shall remain the sole property of the City, in which neither the Corporation nor the Trustee shall have any interest, and may be modified or removed by the City at any time provided that the City shall repair and restore any and all damage to the Project resulting from the installation, modification or removal of any such items. Nothing in this Installment Sale Agreement shall prevent the City from purchasing items to be installed pursuant to this Section 5.07 under a conditional sale or lease purchase contract, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof.

Section 5.08. Operation of the Enterprise. The City covenants to operate, or cause to be operated, the Enterprise in accordance with customary standards and practices applicable to similar facilities.

Section 5.09. Private Business Use Limitation. The City shall assure that:

(a) not in excess of ten percent (10%) of the Proceeds of the Certificates is used for a Private Business Use if, in addition, the payment of the principal or the interest with respect to more than ten percent (10%) of the Proceeds of the Certificates is (under the terms of this Installment Sale Agreement or any underlying arrangement) directly or indirectly, (i) secured by any interest in property, or in payments in respect of property used or to be used for a Private Business Use, or (ii) to be derived from payments (whether or not to the City) in respect of property, or borrowed money, used or to be used for a Private Business Use; and

(b) in the event that *in* excess of five percent (5%) of the Proceeds of the Certificates is used for a Private Business Use, and, in addition, the payment of the principal or the interest with respect to more than five percent (5%) of the Proceeds of the Certificates is (under the terms of this Installment Sale Agreement or any underlying arrangement) directly or indirectly, secured by any interest in property, or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments (whether or not to the City) in respect of property, or borrowed money used or to be used for a Private Business Use, then, (A) said excess over said five percent (5%) of the Proceeds of the Certificates which is used for a Private Business Use shall be used for a Private Business Use related to government use of such Proceeds and (B) each such Private Business Use over five percent (5%) of the Proceeds of the Certificates which is related to a government use of such Proceeds shall not exceed the

amount of such Proceeds which is used for the government use of Proceeds to which such Private Business Use is related.

Section 5.10. Private Loan Use Limitation. The City shall assure that not in excess of the lesser of five percent (5%) of the Proceeds of the Certificates or \$5,000,000 is to be used, directly or indirectly, to make or finance loans (other than loans constituting Nonpurpose Investments and other than loans which enable the borrower to finance any governmental tax or assessment of general application for a specific essential governmental function) to persons other than state or local government units.

Section 5.11. Federal Guarantee Prohibition. The City shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Installment Payments to be "federally guaranteed" within the meaning of section 149(b) of the Code and Regulations.

ARTICLE VI

APPLICATION OF NET PROCEEDS

Section 6.01. Application of Net Proceeds.

(a) From Insurance Award. The Net Proceeds of any insurance award resulting from any damage to or destruction of the Project by fire or other casualty shall be deposited in the Insurance and Condemnation Fund by the Trustee promptly upon receipt thereof and, if the City Representative notifies the Trustee in writing of the City's determination that the replacement, repair, restoration, modification or improvement of the Project is not economically feasible or in the best interests of the City, then such Net Proceeds shall be promptly transferred by the Trustee to the Installment Payment Fund to be applied as provided in Section 10.03 hereof. All Net Proceeds deposited in the Insurance and Condemnation Fund and not so transferred shall be applied to the prompt replacement, repair, restoration, modification or improvement of the Project by the City, upon receipt of a requisition acceptable to the Trustee signed by the City Representative stating with respect to each payment to be made (i) the requisition number, (ii) the name and address of the person, firm or corporation to whom payment is due, (iii) the amount to be paid and (iv) that each obligation mentioned therein has been properly incurred, is a proper charge against the Insurance and Condemnation Fund, has not been the basis of any previous withdrawal, and specifying in reasonable detail the nature of the obligation, accompanied by a bill or a statement of account for such obligation. Any balance of the Net Proceeds remaining after such work has been completed shall be transferred to the Installment Payment Fund. The City covenants that it will commence such replacement, repair, restoration, modification or improvement or indicate that such replacement, repair, restoration, modification or improvement is not economically feasible within 180 days of receipt of such Net Proceeds.

(b) From Eminent Domain Award. The Net Proceeds of any eminent domain award shall be deposited in the Insurance and Condemnation Fund to be held and applied by the Trustee pursuant to Section 7.02 of the Trust Agreement. After redemption in part of the Certificates from the Net Proceeds of any eminent domain award, ~~the amount of the Installment Payments shall be proportionately reduced such~~ that the resulting Installment Payments are in an amount equal to the amount necessary to pay the principal and interest due with respect to the Certificates which are then Outstanding as the same become due and payable.

ARTICLE VII

DISCLAIMER OF WARRANTIES: ACCESS

Section 7.01. Disclaimer of Warranties. THE CORPORATION MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY THE CITY FOR THE PROJECT OR ANY ITEM THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE PROJECT OR ANY ITEM THEREOF. IN NO EVENT SHALL THE CORPORATION BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, IN CONNECTION WITH OR ARISING OUT OF THIS INSTALLMENT SALE AGREEMENT OR THE TRUST AGREEMENT FOR THE EXISTENCE, FURNISHING, FUNCTIONING OR CITY'S USE OF THE PROJECT.

Section 7.02. Access to the Project. The City agrees that the Corporation and any Corporation Representative, and the Corporation's successors or assigns, shall have the right at all reasonable times to enter upon and to examine and inspect the Project. The City further agrees that the Corporation, any Corporation Representative, and the Corporation's successors or assigns shall have such rights of access to the Project as may be reasonably necessary to cause the proper maintenance of the Project in the event of failure by the City to perform its obligations hereunder.

Section 7.03. Release and Indemnification Covenants. The City shall and hereby agrees to indemnify and save the Corporation harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of (a) the use, maintenance, condition or management of, or from any work or thing done on the Project by the City, (b) any breach or default on the part of the City in the performance of any of its obligations under this Installment Sale Agreement, (c) any act or negligence of the City or of any of its agents, contractors, servants, employees or licensees with respect to the Project, (d) any act or negligence of any assignee or sublessee of the City with respect to the Project, or (e) the construction of the Project or the authorization of payment of the Construction Costs or Delivery Costs by the City or the Corporation. No indemnification is made under this Section 7.03, in Section 9.04 or elsewhere in this installment Sale Agreement for willful misconduct, negligence, or breach of duty under this Installment Sale Agreement by the Corporation, its officers, agents, employees, successors or assigns.

ARTICLE VIII

ASSIGNMENT, SALE AND AMENDMENT

Section 8.01. Assignment by the Corporation. Certain of the Corporation's right, title and interest in this Installment Sale Agreement, including the right to receive and enforce payment of the Installment Payments to be made by the City under this Installment Sale Agreement, have been assigned to the Trustee, subject to certain exceptions, pursuant to the Assignment Agreement, to which assignment the City hereby consents.

Section 8.02. Assignment, Sale and Disposition by the City. This Installment Sale Agreement may not be assigned by the City, and neither the Project nor any portion thereof may be sold by the City during the Term of this Installment Sale Agreement.

The City may lease the Project, or any portion thereof, subject to all of the following conditions:

(a) This Installment Sale Agreement and the obligation of the City to make Installment Payments hereunder shall remain obligations of the City;

(b) The City shall, within thirty (30) days after the delivery thereof, furnish or cause to be furnished to the Corporation and the Trustee a true and complete copy of the documents accomplishing such lease;

(c) No such lease by the City shall cause the Project to be used for a purpose other than a governmental or proprietary function authorized under the provisions of the Constitution and laws of the State of California; and

(d) No such lease shall cause the interest component of the Installment Payments to become subject to federal or State of California personal income taxes.

Section 8.03. Amendment of Installment Sale Agreement. Without the written consent of the Trustee, the City and the Corporation will not alter, modify or cancel or agree or consent to alter, modify or cancel this Installment Sale Agreement; excepting only as such alteration or modification may be permitted by Article X of the Trust Agreement.

ARTICLE IX

EVENTS OF DEFAULT AND REMEDIES

Section 9.01. Events of Default Defined. The following shall be "events of default" under this Installment Sale Agreement and the terms "events of default" and "default" shall mean, whenever they are used in this Installment Sale Agreement, any one or more of the following events:

(a) Failure by the City to pay any Installment Payment by the Interest Payment Date or failure to make any other payment required to be paid hereunder at the time specified herein.

(b) Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed in this Installment Sale Agreement or the Trust Agreement, other than as referred to in clause (a) of this Section 9.01, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Corporation, the Trustee or the Owners of not less than five percent (5%) in aggregate principal amount of Certificates then Outstanding; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Corporation, the Trustee or such Owners, as applicable, shall not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the City within the applicable period and diligently pursued until the default is corrected.

(c) The filing by the City of a petition or answer seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or the approval by a court of competent jurisdiction of a petition filed with or without the consent of the City seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction assumes custody or control of the City or of the whole or any substantial part of its property.

Section 9.02- Remedies on Default. Whenever any event of default referred to in Section 9.01 hereof shall have happened and be continuing, the Corporation shall have the right, at its option and without any further demand or notice, to

(a) declare all principal components of the unpaid Installment Payments, together with accrued interest at the rate or rates specified in the respective Outstanding Certificates from the immediately preceding interest Payment Date on which payment was made, to be immediately due and payable, whereupon the same shall become due and payable; and

(b) take whatever action at law or in equity may appear necessary or desirable to collect the Installment Payments then due or thereafter to become due during the Term of the Installment Sale Agreement, or enforce performance and observance of any obligation, agreement or covenant of the City under this Installment Sale Agreement.

Section 9.03. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Corporation is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Installment Sale Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Corporation to exercise any remedy reserved to it in this Article IX it shall not be necessary to give any notice, other than such notice as may be required in this Article IX or by law.

Section 9.04. Prosecution and Defense of Suits. The City shall promptly, upon request of the Corporation or its assignee, from time to time take or cause to be taken such action as may be necessary or proper to remedy or cure any defect in or cloud upon the title to the Project whether now existing or hereafter developing and shall prosecute all such suits, actions and other proceedings as may be appropriate for such purpose and shall indemnify or cause to be indemnified the Corporation and its assignee for all loss, cost, damage and expense, including attorneys' fees, which they or any of them may incur by reason of any such defect, cloud, suit, action or proceedings.

The City shall defend, or cause to be defended against every suit, action or proceeding at any time brought against the Corporation or its assignee upon any claim arising out of the receipt, application of disbursement of any of the Net Revenues or involving the rights of the Corporation or its assignee under this Installment Sale Agreement or the Trust Agreement; provided, that the Corporation and its assignee at their election may appear in and defend any such suit, action or proceeding. The City shall indemnify or cause to be indemnified the Corporation and its assignee against any and all liability claimed or asserted by any person, arising out of such receipt, application or disbursement. Notwithstanding any contrary provision hereof, this covenant shall remain in full force and effect, even though all Installment Payments have been fully paid and satisfied, until a date which is three (3) years following the payment of the last of said Installment Payments.

Section 9.05. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Installment Sale Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 9.06. Application of the Proceeds. The Trustee, as assignee of the Corporation, shall deposit all amounts received under this Article IX in the Installment Payment Fund and shall apply such amounts as provided in Section 13.03 of the Trust Agreement.

Section 9.07. Liability Limited to Net Revenues. Notwithstanding any provision of this Installment Sale Agreement, the City's liability to pay the Installment Payments and other amounts hereunder shall be limited solely to Net Revenues as provided in Sections 4.05 and 4.06 hereof. In the event that Net Revenues shall be insufficient at any time to pay an Installment Payment in full, the City shall not be liable to pay or prepay such Installment Payment other than from Net Revenues.

Section 9.08. Trustee and Certificate Owners to Exercise Rights. Such rights and remedies as are given to the Corporation under this Article IX have been assigned by the Corporation to the Trustee under the Assignment Agreement, to which assignment the City hereby consents. Such rights and remedies shall be exercised by the Trustee and the Owners of the Certificates as provided in the Trust Agreement.

ARTICLE X

PREPAYMENT OF INSTALLMENT PAYMENTS

Section 10.01. Prepayment. The City shall have the right to prepay the Installment Payments, but only in the manner, at the times and in all respects in accordance with the provisions of this Article X.

Section 10.02. Optional Prepayment. Subject to the terms and conditions of this Section 10.02, the Corporation hereby grants an option to City to prepay the installment Payments in full, by paying the total unpaid principal component of the Installment Payments as set forth in Exhibit C or in part, but not in an amount of less than \$5,000 or any integral multiple thereof, at any one time. Said option may be exercised with respect to Installment Payments due on and after August 1, 1994, on any Interest Payment Date on or after August 1, 1993. Said option shall be exercised by City by giving written notice to the Corporation and the Trustee of the exercise of such option at least forty-five (45) days prior to said Interest Payment Date. Such option shall be exercised in the event of prepayment in full, by depositing with said notice cash in the amount sufficient to pay the total unpaid principal component of the Installment Payments as set forth in Exhibit C on said Interest Payment Date, together with any Installment Payments then due but unpaid, or, in the event of prepayment in part, by depositing with said notice an amount divisible by \$5,000 equal to the amount desired to be prepaid together with any installment Payments then due but unpaid. In any event, said cash deposit shall be accompanied by an amount equal to the following amount (expressed as a percentage of the total principal amount prepaid) constituting a prepayment premium:

<u>Dates of Prepayment</u>	<u>Premium</u>
August 1, 1993 and February 1, 1994	2 %
August 1, 1994 and February 1, 1995	1½
August 1, 1995 and February 1, 1996	1
August 1, 1996 and February 1, 1997	½
August 1, 1997 and each February 1 and August 1 thereafter	0

In the event of prepayment in part, the partial prepayment shall be applied by the Corporation or its assignee against Installment Payments in inverse order of their payment date, and the City shall prepare (or cause to be prepared) and provide to the Trustee a revised **schedule** of Installment Payments reflecting said partial prepayment.

Section 10.03. Mandatory Prepayment From Net Proceeds of Insurance or Condemnation. The City shall be obligated to prepay the Installment Payments in whole or in part any August 1 or February 1 beginning February 1, 1989, from and to the extent of any Net Proceeds of any insurance or condemnation award theretofore deposited in the Installment Payment Fund for such purpose pursuant to Section 6.01(a) hereof or pursuant to Section 7.02 of the Trust Agreement. The City and the Corporation hereby agree that such Net Proceeds shall be credited towards the City's obligations under this Section 10.03. Except in the case of such prepayment of the Installment Payments in

full, such payment shall be in addition to the Installment Payment required to be paid by the City on such date.

Section 10.04. Credit for Amounts on Deposit. In the event the City elects or is required to prepay the Installment Payments in full under this Article X. such that the Trust Agreement shall be discharged by its terms as a result of such prepayment, all amounts then on deposit in the Installment Payment Fund or the Reserve Fund shall, to the extent available for prepayment as provided in the Trust Agreement, be credited towards the amounts required to be so prepaid.

Section 10.05. Security Deposit. Notwithstanding any other provision of this Installment Sale Agreement, the City may, on any date, secure the payment of Installment Payments by a deposit with the Trustee, as escrow holder under an escrow deposit and trust agreement as referenced in Section 14.02(d) of the Trust Agreement, of:

(a) in the case of a security deposit relating to all Installment Payments, either (i) cash in an amount which, together with amounts on deposit in the Installment Payment Fund and the Reserve Fund, is sufficient to pay all unpaid Installment Payments, including the principal and interest components thereof, in accordance with the Installment Payment schedule set forth in Exhibit C attached hereto, or (ii) Federal Securities described in paragraph (a) of the definition thereof, together with cash fully insured by the Federal Deposit Insurance Corporation, if required, in such amount as will, in the opinion of counsel whose opinion is acceptable by underwriters in the marketing of tax-exempt obligations and of an independent certified public accountant, together with interest to accrue thereon and, if required, all or a portion of moneys or Federal Securities then on deposit in the Installment Payment Fund and Reserve Fund, be fully sufficient to pay all unpaid Installment Payments on their payment date; or

(b) in the case of a security deposit relating to a portion of the Installment Payments both (i) a certificate executed by a City Representative designating the portion of the Installment Payments to which the deposit pertains, and (ii) cash fully insured by the Federal Deposit Insurance Corporation or Federal Securities described in paragraph (a) of the definition thereof, in such amount as will, together with interest to be received thereon, if any, and an allocable portion of amounts on deposit in the Installment Payment Fund and Reserve Fund, be fully sufficient in the opinion of counsel whose opinion is acceptable by underwriters in the marketing of tax-exempt obligations and in the opinion of an independent certified public accountant, to pay the portion of the Installment Payments designated in the aforesaid City Representative's certificate.

In the event of a deposit pursuant to this Section 10.05, all obligations of the City under this Installment Sale Agreement pertaining to the portion of the Project for which the deposit has been made shall cease and terminate, excepting only the obligation of the City to make, or cause to be made, all Installment Payments, or the portion of Installment Payments to which the deposit pertains, from the deposit made by City pursuant to this Section 10.05. Said deposit shall be deemed to be and shall constitute a special fund for the payment of Installment Payments in accordance with the provisions of this installment Sale Agreement; and further provided that any security deposit relating to the Project shall not affect the covenant of the City contained in Section 4.07 hereof in the event such security deposit is insufficient to pay or prepay all Installment Payments relating to the Project when and as the same become due and payable. Upon said

deposit, the Corporation will execute or cause to be executed any and all documents as may be necessary to release the security provided hereby to the extent of such deposit.

ARTICLE XI

MISCELLANEOUS

Section 11.01. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received 48 hours after deposit in the United States mail with postage fully prepaid:

If to the City:	City of Lodi 221 West Pine Street Lodi, CA 95240 Attention: City Manager
If to the Corporation:	Lodi Public Improvement Corporation 221 West Pine Street Lodi, CA 95240 Attention: President
If to the Trustee:	Bank of America National Trust and Savings Association 201 Mission Street, 15th Floor San Francisco, CA 94105 Attention: Corporate Trust Department

The Corporation and the City, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

Section 11.02. Binding Effect. This Installment Sale Agreement shall inure to the benefit of and shall be binding upon the Corporation and the City and their respective successors and assigns.

Section 11.03. Severability. In the event any provision of this Installment Sale Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 11.04. Amendments, Changes and Modifications. Subject to the provisions of Section 8.03 hereof, this Installment Sale Agreement may be amended or **any of its** terms modified with the written consent of the City and the Corporation.

Section 11.05. Net Contract. This Installment Sale Agreement shall be deemed and construed to be a "net contract" and the City hereby agrees that the Installment Payments shall be an absolute net return to the Corporation, free and clear of any expenses, charges or set-offs whatsoever.

Section 11.06. Further Assurances and Corrective Instruments. The Corporation and the City agree that they **will**, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or

incorrect description of the Project hereby ~~sold~~ or intended so to be or for carrying out the expressed intention of this Installment Sale Agreement.

Section 11.07. Execution in Counterparts. This Installment Sale Agreement may be executed in ~~several~~ counterparts, each of which shall be an original and ~~all~~ of which shall constitute but one and the same instrument.

Section 11.08. Applicable Law. This Installment Sale Agreement shall be governed by and ~~construed~~ in accordance with the laws of the State of California.

Section 11.09. Corporation and City Representatives. Whenever under the provisions of this Installment Sale Agreement the approval of the Corporation or the City is required, or the Corporation or the City is required to take some action at the request of the other, such approval or such request shall be given for the Corporation by a Corporation Representative and for the City ~~by~~ a City Representative, and any party hereto shall be authorized to rely upon any such approval or request.

Section 11.10. Captions. The captions or headings in this Installment Sale Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provision, Article or Section of this Installment Sale Agreement.

IN WITNESS WHEREOF, the Corporation has caused this Installment Sale Agreement to be executed in its corporate name by its duly authorized officer and sealed with ~~its~~ corporate seal; **and** the City has caused this Installment Sale Agreement to be executed in its name by its duly authorized officers, as of the date first above written.

LODI PUBLIC IMPROVEMENT
CORPORATION, as Seller

By _____
President

[S E A L]

ATTEST:

Secretary

CITY ~~OF~~ LODI, CALIFORNIA, as Purchaser

By _____
Mayor

[S E A L]

ATTEST:

City Clerk

EXHIBIT A**DEFINITIONS**

"Assignment Agreement" means the agreement by that name, dated as of August 1, 1988, by and between the Corporation and the Trustee.

"Certificate Register" means the registration books relating to the Certificates maintained by the Trustee in accordance with Section 2.12 of the Trust Agreement.

"Certificates" means the certificates of Participation executed and delivered pursuant to the Trust Agreement.

"City" means the City of Lodi, California, a general law city duly organized and existing under the Constitution and laws of the State of California.

"City Representative" means the City Manager or the Finance Director of the City, or any other person designated by the City Manager to act on behalf of the City under or with respect to the Trust Agreement and/or the Installment Sale Agreement.

"Closing Date" means the date upon which there is a physical delivery of the Certificates in exchange for the amount representing the purchase of the Certificates by the Original Purchaser.

"Code" means the Internal Revenue Code of 1986.

"Construction Costs" means the costs of the acquisition, construction, rehabilitation, equipping, improvement or financing of improvements to, or part of, the Enterprise constituting the Project.

"Construction Fund" means the fund by that name established pursuant to Article III of the Trust Agreement and held by the Trustee.

"Corporation" means the Lodi Public Improvement Corporation, a nonprofit, public benefit corporation organized and existing under the laws of the State of California.

"Corporation Representative" means the President of the Corporation, or any persons authorized to act on behalf of the Corporation under or with respect to the Trust Agreement, the Installment Sale Agreement and the Assignment Agreement.

"Delivery Costs" means all items of expense directly or indirectly payable by or reimbursable to the City or the Corporation relating to the financing of the Project from the proceeds of the Certificates, including, but not limited to filing and recording costs, settlement costs, printing costs, reproduction and binding costs, initial fees and charges and first year's administration fee of the Trustee, Trustee's counsel fees, financing discounts, legal fees and charges, financial and other professional consultant fees, costs

of rating agencies or credit ratings, fees for execution, transportation and safekeeping of the Certificates, travel expenses, insurance or other credit support fees and charges and fees in connection with the foregoing.

"Delivery Costs Fund" means the fund by that name established pursuant to Article III of the Trust Agreement and held by the Trustee.

"Due Date" means the 15th day of each January and July, commencing January 15, 1989.

"Enterprise" means any and all facilities of the City for the disposal or reuse of wastewater, including sewage treatment plants, intercepting and collecting sewers, outfall sewers, force mains, pumping stations, ejector stations, pipes, valves, machinery and all other appurtenances necessary, useful or convenient for the collection, treatment, purification or disposal of sewage, and any necessary lands, rights of way and other real or personal property useful in connection therewith.

"Event of Default" means an event of default under the Installment Sale Agreement, as defined in Section 9.01 thereof.

"Excess Investment Earnings" means an amount equal to the sum of:

(a) the excess of

(i) the aggregate amount earned on all Nonpurpose Investments (other than amounts attributable to an excess described in this paragraph (a)), over

(ii) The amount that would have been earned if the Yield on such Nonpurpose Investments (other than amounts attributable to an excess described in this paragraph (a)) had been equal to the Yield of the Installment Sale Agreement, plus

(b) any income attributable to the excess described in paragraph (a).

"Federal Securities" means any of the following which are noncallable and which at the time of investment are legal investments under the laws of the State of California for the moneys proposed to be invested therein:

(a) direct obligations of (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America), or obligations the payment of principal of and interest on which are unconditionally guaranteed by, the United States of America, including State and Local Government Series obligations; or

(b) Obligations of any of the following federal agencies which obligations represent full faith and credit of the United States of America: (i) Farmers Home Administration; (ii) General Services Administration; (iii) U.S. Maritime Administration; (iv) Small Business Administration; (v) Government National Mortgage Association; (vi) U.S. Department of

Housing & Urban Development; (vii) Federal Housing Administration; (viii) Export-Import Bank of the United States; and (ix) Federal Financing Bank.

"Fiscal Year" means any period of twelve (12) consecutive months established by the City as its fiscal year and shall initially mean the period commencing July 1 of one year and ending on July 30 of the following year.

"Gross Proceeds" means the sum of the following amounts:

(a) original proceeds, namely, net amounts received by or for the City as a result of the sale of the Certificates, excluding original proceeds which become transferred proceeds (determined in accordance with applicable Regulations) of obligations issued to refund in whole or in part the Installment Sale Agreement;

(b) investment proceeds, namely, amounts received at any time by or for the City, such as interest and dividends, resulting from the investment of any original proceeds (as referenced in clause (a) above) or investment proceeds (as referenced in this clause (b)) in Nonpurpose investments, increased by any profits and decreased (if necessary, below zero) by any losses on such investments, excluding investment proceeds which become transferred proceeds (determined in accordance with applicable Regulations) of obligations issued to refund in whole or in part the installment Sale Agreement;

(c) sinking fund proceeds, namely, amounts, other than original proceeds, investment proceeds or transferred proceeds (as referenced in clauses (a) and (b) above) of the Certificates, which are held in the Installment Payment Fund and any other fund to the extent that the City reasonably expects to use such other fund to pay the Installment Payments;

(d) amounts in the Reserve Fund and in any other fund established as a reasonably required reserve for the payment of the Installment Payments;

(e) Investment Property pledged as security for payment of the Installment Payments by the City;

(f) amounts, other than as specified in this definition, used to pay the Installment Payments; and

(g) amounts received as a result of investing amounts described in this definition.

"Gross Revenues" means all gross income and revenue received by the City from the ownership and operation of the Enterprise, including, without limiting the generality of the foregoing, (a) all income, rents, rates, fees, charges or other moneys derived from the services, facilities and commodities sold, furnished or supplied through the facilities of the Enterprise, (b) the earnings on and income derived from the investment of such income, rents, rates, fees, charges or other moneys to the extent that the use of such earnings and income is limited by or pursuant to the law to the Enterprise, and (c) the proceeds derived by the City directly or indirectly from the sale, lease or other disposition of a part of the Enterprise as permitted in the Installment Sale Agreement; provided, that the term "Gross Revenues" shall not include customers' deposits or any other deposits subject to refund until such deposits have become the property of the City.

"Independent Counsel" means an attorney duly admitted to the practice of law before the highest court of the state in which he maintains an office and who is not an employee of the Corporation, the Trustee or the City.

"Information Services" means Financial Information, Inc.'s "Daily Called Bond Service", 30 Montgomery Street, 10th Floor, Jersey City, New Jersey 07302, Attention: Editor; Kenny Information Services' "Called Bond Service," 55 Broad Street, 28th Floor, New York, New York 10004; Moody's investors Service "Municipal and Government," 99 Church Street, 8th Floor, New York, New York 10007, Attention: Municipal News Reports; Standard & Poor's Corporation "Called Bond Record," 25 Broadway, 3rd Floor, New York, New York 10004; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other services providing information with respect to called bonds as the City may designate in a written request of the City delivered to the Trustee.

"Installment Payment" means any payment required to be paid by the City to the Corporation pursuant to Section 4.04 of the Installment Sale Agreement.

"Installment Payment Fund" means the fund by that name established and held by the Trustee pursuant to Article V of the Trust Agreement.

"Installment Sale Agreement" means the agreement by that name, dated as of August 1, 1988, by and between the Corporation and the City, and any duly authorized and executed amendment or supplement thereto.

"Insurance and Condemnation Fund" means the fund by that name established pursuant to Article VII of the Trust Agreement and held by the Trustee.

"Interest Payment Date" means February 1 and August 1 of each year, commencing February 1, 1989.

"Investment Property" means any security (as said term is defined in section 165(g)(2)(A) and (B) of the Code), obligation, annuity contract or investment-type property, excluding, however, obligations (other than specified private activity bonds as defined in section 57(a)(5)(C) of the Code) the interest on which is excluded from gross income, under section 103 of the Code, for federal income tax purposes.

"Net Proceeds", when used with respect to the Project, means any insurance proceeds or condemnation award paid with respect to the Project, remaining after payment therefrom of all expenses incurred in the collection thereof.

"Net Revenues" means Gross Revenues less Operation and Maintenance Expenses.

"Nonpurpose Investment" means any Investment Property which is acquired with the Gross Proceeds of the Certificates and is not acquired in order to carry out the governmental purpose of the Installment Sale Agreement.

"Operation and Maintenance Expenses" means all expenses and costs of management, operation, maintenance and repair of the Enterprise and all incidental

costs, fees and expenses properly chargeable to the Enterprise (but excluding debt service or other similar payments on Parity Debt or other obligations and depreciation and obsolescence charges or reserves therefor and amortization of intangibles and inter-fund transfers or other bookkeeping entries of a similar nature).

"Original Purchaser" means the first purchaser of the Certificates upon their delivery by the Trustee on the Closing Date.

"Outstanding", when used as of any particular time with respect to Certificates, means (subject to the provisions of Section 10.03 of the Trust Agreement) all Certificates theretofore executed and delivered by the Trustee under the Trust Agreement except:

(a) Certificates theretofore cancelled by the Trustee or surrendered to the Trustee for cancellation;

(b) Certificates for the payment or redemption of which funds or eligible securities in the necessary amount, including accrued interest thereon, shall have theretofore been deposited with the Trustee (whether upon or prior to the maturity or redemption date of such Certificates), provided that, if such Certificates are to be redeemed prior to maturity, notice of such redemption shall have been given as provided in Section 4.03 of the Trust Agreement or provision satisfactory to the Trustee shall have been made for the giving of such notice; and

(c) Certificates in lieu of or in exchange for which other Certificates shall have been executed and delivered by the Trustee pursuant to Section 2.09 of the Trust Agreement.

"Owner" or "Certificate Owner" or "Owner of a Certificate", or any similar term, means the person in whose name a Certificate shall be registered.

"Parity Debt" means indebtedness or other obligations (including leases and installment sale agreements) hereafter issued or incurred and secured by a pledge of and lien on Net Revenues equally and ratably with the Installment Payments.

"Permitted Encumbrances" means, as of any particular time: (a) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the City may, pursuant to provisions of Article V of the Installment Sale Agreement, permit to remain unpaid; (b) the Installment Sale Agreement and the assignment of the Corporation's interests in the installment Sale Agreement pursuant to the Assignment Agreement; (c) any right or claim of any mechanic, laborer, **materialman**, supplier or **vendor** filed or perfected in the manner prescribed by law and (d) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist as of the date of the Installment Sale Agreement and which the City certifies in writing will not materially impair the use of the property for the Project.

"Permitted Investments" means any of the following which at the time of investment are legal investments under the laws of the State of California for the moneys proposed to be invested therein:

(a) Federal Securities;

(b) U.S. Dollar denominated deposit accounts fully insured to the holder (up to the \$100,000 maximum coverage) by the Federal Deposit Insurance Corporation or by the Federal Savings and Loan Insurance Corporation;

(c) U.S. Dollar denominated deposit accounts, federal funds and banker's acceptances with commercial banks (foreign or domestic) which have a rating on their short term certificates of deposit on the date of purchase of "A-1" or "A-1+" by Standard & Poor's and "P-1" by Moody's and maturing no more than 360 days after the date of purchase;

(d) Money market funds rated in the highest rating category of any nationally recognized rating agency, which are monitored quarterly and, for amounts of less than \$100,000, money market funds maintained by the banking department of the Trustee, so long as the Trustee or its parent has a combined capital and surplus of at least \$50,000,000;

(e) Pre-refunded municipal obligations defined as follows: Any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state (i) which are not callable at the option of the obligor prior to maturity or as to which irrevocable notice has been given by the obligor to call on the date specified in the notice, and (ii) which are fully secured as to principal and interest and redemption premium, if any, by a fund consisting only of cash or obligations described in paragraph (a) above, which fund may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, and (iii) which fund is sufficient, as verified by an independent certified public accountant, to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in this paragraph on the maturity date or dates thereof or on the redemption date or dates specified in the irrevocable instructions referred to in subclause (i) of this paragraph, as appropriate, and (iv) which are rated, based on the escrow, in the highest rating category of Standard & Poor's Corporation and Moody's Investors Service, Inc. or any successors thereto; and

(9) written repurchase agreements with any bank, savings institution or trust company (including the Trustee) which is insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, or with any broker-dealer with retail customers which falls under Securities Investors Protection Corporation protection, provided that such repurchase agreements are fully secured by (a) above or obligations of any agency or instrumentality of the United States of America, and provided further that (i) such collateral is held by the Trustee or any agent acting solely for the Trustee during the term of such repurchase agreement, (ii) such collateral is not subject to liens or claims of third parties, (iii) such collateral has a market value (determined at least once every 30 days) at least equal to the amount invested in the repurchase agreement, (iv) the Trustee has a perfected first security interest in the collateral, (v) the agreement shall be for a term not longer than 270 days and (vi) the failure to maintain such collateral at the level required in (iii) above will require the Trustee to serve notice to the other party to correct such deficiency. If such deficiency is not corrected, the Trustee is directed to liquidate the collateral.

"Prepayment" means any payment applied towards the prepayment of the Installment Payments, in whole or in part, pursuant to Article X of the Installment Sale Agreement.

"Private Business Use" means use directly or indirectly *in* a trade or business carried on by a natural person or in any activity carried on by a person other than a natural person, excluding, however, use by a governmental unit and use as a member of the general public.

"Proceeds," when used with reference to the Certificates: means the face amount of the Certificates, plus accrued interest and premium, if any, less original issue discount, if any.

"Project" means the improvements to the Enterprise described in Exhibit B to the Installment Sale Agreement.

"Purchase Price" The term "Purchase Price," for the purpose of computation of the Yield of *the* Installment Sale Agreement, has the same meaning as the term "issue price" in sections 1273(b) and 1274 of the Code, and, in general, means the initial offering price of the Certificates to the public (not including bond houses and brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers) at which price a substantial amount of the Certificates are sold or, if the Certificates are privately placed, the price paid by the first buyer of the Certificates or the acquisition cost of the first buyer. The term "Purchase Price", for the purpose of computation of the Yield of Nonpurpose Investments, means the fair market value of the Nonpurpose Investments on the date of use of Gross Proceeds for acquisition thereof, or if later, on the date that investment Property constituting a Nonpurpose Investment becomes a Nonpurpose Investment **of** the Certificates.

"Rebate Calculation Period" means the one-year period beginning on the anniversary of the Closing Date in each year and ending on the day prior to the anniversary date of the Closing Date **in** the following year except that the first Rebate Calculation Period shall begin on the Closing Date.

"Rebate Fund" means the fund by that name created by, and held by the Trustee pursuant to Section 8.08 of the Trust Agreement.

"Regulations" **means** temporary and permanent regulations promulgated under the Code or any predecessor internal Revenue Code.

"Reserve Fund" means the fund by that name established pursuant to Article VI of the Trust Agreement and held by the Trustee.

"Reserve Requirement" means a sum equal to the lesser of (i) ten percent of the aggregate original principal component of Installment Payments, (ii) the maximum amount of Installment Payments due in the current or any future year, or (iii) 125% of the average amount of Installment Payments due in the current or any future year. The Reserve Requirement on the Closing Date is \$_____.

"Securities Depositories" means The Depository Trust Company, 711 Stewart Avenue, Garden City, New York 11530, Fax-(516) 227-4039 or 4190; Midwest Securities Trust Company, Capital Structures-Call Notification, 440 South LaSalle Street, Chicago, Illinois 60605, Fax-(312) 663-2343; Philadelphia Depository Trust Company, Reorganization Division, 1900 Market Street, Philadelphia, Pennsylvania 19103, Attention: Bond Department, Dex-(215) 496-5058; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other securities depositories as the City may designate in a certificate of the City delivered to the Trustee.

"Term of the Installment Sale Agreement" means the time during which the Installment Sale Agreement is in effect, as provided in Section 4.03 of the Installment Sale Agreement.

"Trustee" means Bank of America National Trust and Savings Association, or any successor thereto, acting as Trustee pursuant to the Trust Agreement.

"Trust Agreement" means the agreement by that name, dated as of August 1, 1988, by and among the Trustee, the Corporation and the City, together with any amendments or supplements thereto permitted to be made thereunder.

"Written Certificate" of the City means a written certificate signed in the name of the City by a City Representative. Any such certificate or request may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument. If and to the extent required by Section 1.03 of the Trust Agreement or Section 1.02 of the installment Sale Agreement, each such certificate shall include the statements provided for in Section 1.03 of the Trust Agreement or Section 1.02 of the Installment Sale Agreement.

"Yield" means that yield which, when used in computing the present worth of all payments of principal and interest (or other payments in the case of Nonpurpose Investments which require payments in a form not characterized as principal and interest) on a Nonpurpose investment or of the Installment Payments produces an amount equal to the Purchase Price of such Nonpurpose Investment or the Certificates, all computed as prescribed in applicable Regulations.

EXHIBIT B

DESCRIPTION OF THE PROJECT

The Project involves the expansion of the domestic treatment system capacity of the City's White Slough Water Pollution Control Facility (the "Facility"). The Facility is the City's only wastewater treatment facility and includes parallel systems for domestic/commercial and industrial wastewater.

The Project includes improvements relating to the treatment of domestic wastewater and the disposal of resulting sludge. Treatment improvements include acquisition of two new primary clarifiers, a new aeration basin and two new secondary clarifiers, conversion of existing secondary clarifiers to chlorine contact tanks, and other treatment process improvements. Sludge disposal improvements include acquisition of a new sludge digester, expansion and modification of existing sludge storage lagoons, modifications to the irrigation conveyance system, piping and plumbing improvements, installation of groundwater monitoring wells and a one-time transfer of existing sludge to a land fill operated by the County of San Joaquin.

The Project also includes acquisition of a 250 kilowatt generator to produce power from the combustion of digester gases. The City expects to use this power on-site to reduce the operating costs of the Facility. Also included is reimbursement to the City for the cost of acquiring approximately 275 acres of agricultural land contiguous to the existing agricultural disposal lands.

When the Project *is* completed, the Facility will have a domestic treatment system capacity of 8.5 million gallons per day (mgd), an increase of 2.3 mgd over the current capacity of 6.2 mgd. Based on current growth estimates, the City expects the Facility, as so improved, to meet the demand on the domestic treatment system for the next ten to fifteen years.

EXHIBIT C

SCHEDULE OF INSTALLMENT PAYMENTS

<u>Due Date</u>	<u>Principal</u>	<u>interest</u>	<u>Total</u>
01/15/89	\$	\$	\$
07/15/89			
01/15/90			
07/15/90			
01/15/91			
07/15/91			
01/15/92			
07/15/92			
01/15/93			
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